

MINUTES OF THE MEETING  
OF THE  
BOARD OF MEDICINE AND SURGERY

June 30, 2006

ROLL CALL

The meeting of the Board of Medicine and Surgery was called to order by Chairman Michael Sitorius, MD at 9:00 a.m. on Friday, June 30, 2006, at Staybridge Suites, Staybridge Room, 2701 Fletcher Ave, Lincoln, Nebraska. The following members answered to roll call:

Michael A. Sitorius, MD, Chairman  
David A. Dryburgh, Vice-Chairman  
Carl V. Smith, MD, Secretary  
Randy T. Kohl, MD  
Vonn E. Roberts, MD  
Arthur A. Weaver, DO

Absent: Larry E. Bragg, MD  
Samuel L. Brown, PhD

A quorum was present and the meeting convened.

Also present to participate in the meeting: Terri Nutzman, Assistant Attorney General; Robert Semerena, Investigations Division Administrator; Susanne Rydberg, Investigator; Patricia Lemke, Investigator; Loretta Bennet, Investigator; Jeff Newman, Investigator; Duane Newland, Investigator; Becky Wisell, Section Administrator, Credentialing Division; Vicki Bumgarner, Credentialing Coordinator; Credentialing Division; Meegan Dyrland, Credentialing Specialist, Credentialing Division.

Sitorius introduced Linda Lazure, Chairperson of the Board of Health. She stated that she had come to observe the meeting and see how the processes of the Board work, since the Board of Health make appointments to all of the boards.

ADOPTION OF AGENDA

Kohl moved, seconded by Dryburgh, to adopt the agenda. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

APPROVAL OF MINUTES OF THE MEETING FROM MAY 19, 2006

Roberts moved, seconded by Smith, to approve the minutes of the May 19, 2006 meeting. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

NON-DISCIPLINARY ASSURANCES OF COMPLIANCE

Helen Meeks, Administrator, Credentialing Division, addressed the Board regarding the non-disciplinary Assurances of Compliance and the accessibility of this information via the Credentialing Division's website. The history of the Assurances of Compliance began with the passing of LB 1210 in 1994. Legislation was introduced for Assurances of Compliance due to the boards' concerns that they needed to have a method to deal with issues that did not rise to the level of discipline. This was viewed as a quality assurance approach. Initially, the legislation allowed for these Assurances of Compliance to remain confidential (not public information). Opposition was expressed by the Attorney General's office and other entities regarding these possible "secret agreements". Based on this, the legislation that was passed included the following elements: 1) A board must decide if the matter in question is in violation, 2) The matter would then be referred to the Attorney General to file an Assurances of Compliance, 3) The board may advise the Attorney General on the contents of the Assurances of Compliance and 4) A violation of an Assurances of Compliance constitutes unprofessional conduct.

Meeks addressed concerns regarding the ability for the public to view non-disciplinary actions on the Division's website. Meeks made it very clear that it is the choice of the Department to put this information on the website. This decision falls within the State of Nebraska e-government vision, which former Governor Johanns introduced around 2000. The elements of this vision are: the State of Nebraska never sleeps-providing 24 hours access online to the public, provide unlimited disclosure to public information, and facilitate licensee mobility.

Since 1997, a total of 442 Assurances of Compliance have been issued, with the greatest number issued to nurses (100+). Other profession numbers include physicians (98), pharmacists (54). Within the last two years, 48 AOC's have been issued to physicians. The main source of inquiries regarding these non-disciplinary actions came from insurers such as BlueCross/BlueShield and Midlands Choice. These companies request copies of public documents and many ask why they can't get the public documents online. In many cases, the public is confused about the difference between an Assurance of Compliance and a censure and an Assurance of Compliance.

Meeks addressed the importance of balancing concerns between licensees and the needs of the public. The Department tries to resolve issues that may arise due to non-disciplinary actions. If an Assurance of Compliance has led to adversity, the Department will attempt to contact the agency who may be trying to impose disciplinary action or put up a barrier for the Nebraska licensee to make sure that they understand that Assurances of Compliance are non-disciplinary.

Krynn Buckley, MD, President of the Nebraska Medical Association (NMA) addressed the board regarding the NMA's view on the non-disciplinary Assurances of Compliance. They believe it is important to have a non-disciplinary tool for the Board to use. However, it is viewed by the public as a disciplinary action even when it clearly states, "non-disciplinary."

The NMA is also concerned that these letters are reported to the Federation of State Medical Boards (FSMB). It has become a problem for physicians who are trying to become recertified in their specialty.

Wisell commented that the FSMB is a database of actions, including both disciplinary and non-disciplinary actions.

Weaver asked the NMA to brainstorm ideas for legislation for an alternative to the current AOC.

It was also discussed that the NMA, the Department and the Board would work together on creating and developing educational tools for practitioners regarding the process when a complaint is filed, and the licensee's rights and responsibilities.

#### BOARD MEMBER AND EXPERT WITNESS IMMUNITY

Roger Brink, Legal Counsel to the Nebraska Department of Health and Human Services Regulation and Licensure (Department), spoke to the Board regarding immunity of board members and expert witnesses. He stated that board members, acting in the capacity of their roles as board members, whether as expert witnesses at disciplinary hearings before the Department or otherwise, have what is known as "good faith" immunity from prosecution. In addition, the Attorney General's Office can defend them in a lawsuit.

Physicians who act as expert witnesses in disciplinary hearings before the Department also have "good faith" immunity from prosecution, however, the Attorney General's Office is not able not to defend them in a lawsuit.

Individuals who make a complaint about a health care provider to the Department have what is known as "absolute" immunity from prosecution.

#### INVESTIGATIONAL REPORTS

Smith moved, seconded by Roberts, to go into closed session for the purpose of hearing investigational reports. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried and the meeting went into closed session at 10:10 a.m.

Michael Grutsch, Program Manager, Investigations Division entered the meeting at 10:10 a.m.

The meeting returned to open session at 12:06 p.m.

PHYSICIAN APPLICATION REVIEW & DISPOSITION

Initial Licensure

Mark Lyman, MD-Smith moved, seconded by Lyman, to approve issuance of a license to Lyman. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Emily McCarty, MD-Smith moved, seconded by Dryburgh, to approve issuance of a license to McCarty pending completion of her application. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Stephen Needell, MD-Smith moved, seconded by Kohl, to approve issuance of a license to Needell. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

David F. Mercer, MD-Smith moved, seconded Dryburgh, to approve issuance of a license to Mercer. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Roy Abraham, MD-Smith moved, seconded by Kohl, to approve issuance of a license to Abraham pending completion of successful retake of USMLE Step I and II Clinical Knowledge, and also successful completion of Step 2 Clinical Skills. The Board determined that his postgraduate medical education in the United Kingdom and the United States is comparable to 3 years of Accreditation Council for Graduate Medical Education (ACGME) postgraduate medical education for the purposes of licensure in Nebraska. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

William Cimino, MD-Smith moved, seconded by Kohl, to approve issuance of a license to Cimino. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Scott Kindler, MD-Kohl moved, seconded by Smith, to approve issuance of a license to Kindler. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Charles Woodridge, MD-Roberts moved, seconded by Weaver, to approve issuance of a Locum Tenens permit to Woodridge. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Samuel Downing, MD- Smith moved, seconded by Dryburgh, to recommend issuing a limited license to Downing. The limitation would be that he could not practice obstetrics or any pre-natal care. The reason for the limitation is the disciplinary action in Colorado. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Douglas Niemann, MD-Smith moved, seconded by Dryburgh, to approve a license to Niemann. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Michael Hawks-application for a Temporary Educational Permit-Weaver moved, seconded by Smith, to approve issuance of a permit to Hawks pending completion of his application. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

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Brian Northcutt-application for a Temporary Educational Permit-Smith moved, seconded by Dryburgh, to approve issuance of a permit to Northcutt. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Ray House, MD-Kohl moved, seconded by Smith, to approve issuance of a license to House. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Jeffrey Luther, MD-Smith moved, seconded by Dryburgh, to approve issuance of a license to Luther. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Derek Whiddon, MD-Smith moved, seconded by Dryburgh, to approve issuance of a license to Whiddon. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Nazir Delawar-application for a Temporary Educational Permit-Weaver moved, seconded by Smith, to approve issuance of a permit to Delawar. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Meysam Kebriaei-application for a Temporary Educational Permit-Smith moved, seconded by Dryburgh, to approve issuance of a permit to Kebriaei pending completion of his application. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

#### Reinstatement

Frank Carson Jr, MD-reinstatement after more than one year since revocation for non-payment of renewal fees. Kohl moved, seconded by Weaver, to reinstate the license for Carson. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Thomas Vinton, MD- reinstatement after more than one year since revocation for non-payment of renewal fees. Weaver moved, seconded by Smith, to reinstate the license for Vinton. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

#### PHYSICIAN ASSISTANT APPLICATION REVIEW & DISPOSITION

##### Application to Supervise a Third Physician Assistant

James Biskup, MD-request to supervise a third PA, Jessica Holmes. Dr. Biskup is currently certified to supervise two physician assistants. Smith moved, seconded by Weaver, to approve the application. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

##### Application to Supervise a Physician Assistant at a Secondary Site

Thomas Fennessy, MD-request to supervise a PA at a secondary site, Julie Willhelm. Smith moved, seconded by Dryburgh, to table a decision on the application pending a decision by the Physician Assistant Committee at their meeting. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

Thomas Fennessy, MD-request to supervise a PA at a secondary site, Derek Nelson. Smith moved, seconded by Dryburgh, to approve the application. Voting aye: Sitorius, Dryburgh, Kohl, Roberts, Smith, Weaver. Voting nay: None. Absent: Bragg, Brown. Motion carried.

#### DISCIPLINARY INFORMATION – ACTIONS TAKEN & PENDING

The Board reviewed actions taken and pending since the last meeting.

Uniform Licensing Law Rewrite and Practice Act Changes

A draft copy of the ULL Rewrite as well as the Practice Act Changes has been received and will be provided on the Department's website.

PROPOSALS FOR LEGISLATION IN 2007

The deadline to submit the proposals to the Policy Cabinet for legislation in 2007 is Friday, July 7, 2006.

LICENSEE ASSISTANCE PROGRAM

Judi Leibrock, Licensee Assistance Program Coordinator, spoke about the Licensee Assistance Program. There has been an increase of the number of people she has assessed and the amount of referrals she received.

PAPERLESS MEETINGS

Wisell met with Information Systems and Technology (IS &T) to review the software that the Board would like to use for the paperless meetings. IS & T personnel are now researching the software the Board had chosen as well as some other options.

FINANCIAL REPORT

The Board reviewed the status of the budget as of May 31, 2006.

PHARMACEUTICAL CARE AGREEMENTS

The Board reviewed the pharmaceutical care agreements submitted by Anthony Rodewald, RP and Dan Farrell, MD.

The Board discussed a name for the upcoming newsletter. The goal is to get the first newsletter out by the end of August.

ADJOURNMENT

There being no further business, the meeting adjourned at 1:57 p.m.

Respectfully submitted,



Carl V. Smith, MD, Secretary  
Board of Medicine and Surgery